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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 616

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE, NEW YORK DISTRICT, DEPARTMENT OF JUSTICE,

Petitioner,

v.

UNITED STATES OF AMERICA, EX REL. JOSEPH ACCARDI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

JACK WASSERMAN,
Attorney for Respondent,
Warner Building,
Washington 4, D. C.

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In its Reply Brief, the Government seeks to contradict the testimony of the Chairman of the Board of Immigration Appeals by offering for the first time evidence to this Court in the form of an Appendix.

The Chairman testified on June 23, 1954, that there "is no case where we have granted suspension of deportation" and in no case had preexamination been granted. (R. 119, 120.) "t was either form of this type of discretionary relief

which was sought in the instant case (R. 181) and it is the failure to exercise discretion with which we are here concerned. 347 U.S. 268.

Case No. I cited in the Appendix of the Reply Brief involved the legal issues of citizenship and expatriation and not discretion. It is the only favorable decision prior to this Court's ruling in the instant case. Case No. II, decided by the Board after this Court's decision, likewise involved a problem of law. Case No. III is the only similar case, and that was decided on March 8, 1955, after this Court's decision, subsequent to the adverse ruling of the Court of Appeals herein on January 7, 1955 and the filing of the petition for a writ of certiorari herein. Case No. III, which involves an alien by the name of Francesco Brancato has not only resulted in the withdrawal of the favorable discretionary relief which has been granted but also in the removal of the hearing officer who conducted the proceedings, as appears more fully from the Appendix annexed hereto. There is therefore no case cited by petitioner in which final favorable discretion has been exercised in a program case.

The testimony of the Chairman, moreover, that at the time he testified, in no case had discretion in the form of suspension of preexamination been granted, was accurate and may not now be impeached.

Respectfully submitted,

JACK WASSERMAN,
Attorney for Respondent,
Warner Building,
Washington 4, D. C.

APPENDIX

For Immediate Release
Wednesday, April 6, 1955

THE DEPARTMENT OF JUSTICE

Commissioner Joseph M. Swing of the Immigration and Naturalization Service today issued the following statement:

The Immigration and Naturalization Service has just completed an investigation of the handling of the deportation case of Francesco Brancato. The report of the investigation discloses that, for a period of years, Immigration investigators have been developing information concerning Brancato's activities. The files of the Service contain information obtained from local and federal law enforcement sources, Senate Committee files and from independent investigation by the Service.

The investigation of the case was conducted by the Chief Field Inspector of the Central Office of the Immigration and Naturalization Service, Washington, D. C. It discloses that the Brancato deportation case was assigned to Special Inquiry Officer, Arthur J. Loveland. The hearing before Mr. Loveland commenced March 2, 1953 on a warrant charging Brancato with deportability for conviction of perjury as a crime involving moral turpitude within five years after entry. Brancato was ordered deported March 20, 1953. He appealed to the Board of Immigration Appeals in Washington. On August 11, 1953, the Board dismissed his appeal. Brancato's attorney requested the Board to reopen the case as provided by regulations to permit Brancato to apply for a suspension of the deportation order. On December 28, 1953, the case was ordered reopened by the

Board. Appeals by the Commissioner to the Board to reconsider its decision to reopen were denied. Accordingly, on September 21, 1954, Mr. Loveland conducted a hearing on Brancato's eligibility for suspension but did not develop for the record or place in the record important derogatory information concerning Brancato.

Mr. Loveland did deny, however, the application for suspension on November 15, 1954. The case was referred for review to the Board of Immigration Appeals under the regulations. On March 8, 1955, based solely on its review of the record as developed and forwarded by Mr. Loveland, the Board held that Brancato had established his eligibility for suspension of deportation and that, subject to Congressional approval, he would not be deported.

The report of the Chief Field Inspector upon review indicates that Special Inquiry Officer Loveland was derelict in his duties under the immigration law, and under the regulations, instructions and policy pronouncements of the Service. The report further discloses that Mr. Loveland failed to introduce material and available documentary evidence into the record of Brancato's hearing; failed to develop the record by appropriate interrogation of Brancato based on information contained in the Service files; failed properly to evaluate the evidence offered on Brancato's behalf; and failed to attach relevant documents to the record which was forwarded to the Board of Immigration Appeals. Because of this, the Board was deprived of material necessary for a proper evaluation of Brancato's plea.

The investigation into the circumstances of this case has established that the mishandling of the deportation proceedings resulted entirely from negligence and incompetence; no proof whatsoever has come to light indicating criminality on the part of any employee or officer of the United States Government.

Mr. Loveland has been relieved of his duties. The Service is preparing formal charges for disciplinary action in accordance with Civil Service rules and regulations.

One of my first instructions to the new Regional Headquarters in connection with reorganization of the Service January 3, 1955, was to maintain close and continuous observation of inquiry officers because of the important effect on national welfare they have through deportation and exclusion hearings. Specially selected inspecting officers now are doing this work. One such office surveyed operations in connection with hearings in the Buffalo District, where Mr. Loveland is stationed, before the circumstances in the Brancato case were brought to my attention. The survey report was submitted to me after I began a separate investigation into the Brancato case. The report supports my conclusion that Mr. Loveland lacks the necessary qualifications of a special inquiry officer.

With the case reopened by order of the Board, a further hearing will be held in the immediate future so all available information can be considered.

(1395-3)